


Administrative Office of the Courts

Chief Justice Richard C. Howe
Chairman, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Julia D'Alesandro, Audit Department
From:  Brent Johnson, General Counsel
Re: Plea agreements in Domestic Violence Cases
Date: May 14, 2001

This memorandum is in response to the two questions that you posed concerning plea in abeyance in domestic violence cases. You are correct in your reading of Utah Code Ann. § 77-36-1.1(2) in that a plea in abeyance is considered a conviction for subsequent enhancement purposes. Thus, if a defendant enters a plea in abeyance on a domestic violence case, and is subsequently charged with another domestic violence offense within five years, the subsequent offense should be enhanced. It is therefore important to make certain that domestic violence cases are correctly identified for proper handling.

The problems that have arisen in this area are related to the fact that there is not a separate offense of domestic violence. Domestic violence is an offense such as assault or harassment which is committed between cohabitants. Cohabitants are, for example, individuals who are or have been married, have children together, or are otherwise related by blood. The difficulty arises in correctly identifying domestic violence cases. The courts rely on the prosecutors to flag domestic violence cases. We know that prosecutors do not always do such. We therefore try to make certain that judges are aware when domestic violence cases are before them. In any event, these cases should be flagged at the beginning to make certain that they receive the correct treatment. This is true because there are other issues involved with domestic violence cases, such as pre-trial and post-conviction protective orders, in addition to the issues related to enhancement.

On your second question, relating to the requirements for creating a record, the plea in abeyance agreement for domestic violence cases should contain language notifying the defendant that a plea in abeyance will be considered a conviction for later enhancement purposes.

I hope that this answers your questions. Please let me know if you have any additional questions or require additional clarification.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**